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May 8, 2006

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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D. C. 20554

**Re: Ex Parte Notice
MB Docket No. 05-210**

Dear Ms. Dortch:

This is to inform you that on May 8, 2006, and the undersigned, as counsel to Radioactive, LLC met with Rudy Brioché, Legal Advisor to Commissioner Adelstein, to discuss the adoption of streamlined processing for community of license changes for FM allotments and the lifting of the freeze on such changes in connection with the above-referenced proceeding. The attached presentation was made during such meeting.

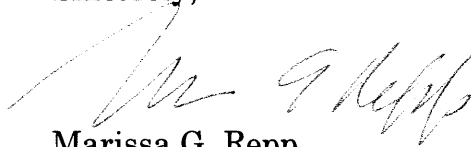
Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. In addition, I am sending

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Marlene H. Dortch
May 8, 2006
Page 2

one copy of this notice via e-mail to the FCC representatives listed below. Please contact me directly with any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. G. Repp", is written over a light gray horizontal line.

Marissa G. Repp
Counsel to Radioactive, LLC

Attachment

cc: Rudy Brioché

MB Docket No. 05-210
Revision of Procedures Governing Amendments
to FM Table of Allotments
and Changes of Community of License
in the Radio Broadcast Services

Presentation by Radioactive, LLC
May 1, 2006

- Radioactive, LLC (“Radioactive”) has been an active participant in auctions for FM allotments: Radioactive was the winning bidder for 21 new FM station permits in Auction No. 37 and five permits in Auction No. 62. The first wave of Radioactive’s permits were issued in March 2005, with the standard three-year construction deadline.
- Radioactive supports the proposal set out for comment in the Notice of Proposed Rule Making (“NPRM”) in MB Docket No. 05-210 (released June 14, 2005) to permit changes in FM station community of license by minor modification applications in lieu of the current, two-step, petition for rulemaking/modification application process. Such a one-step, minor modification process will speed changes that meet the FCC’s allotment priorities and will conserve Commission staff resources.
- When it adopted the NPRM in MB Docket No. 05-210, the Commission also imposed a freeze on the filings of petitions for changes in the FM Table of Allotments. In light of the freeze, the Commission directed the staff to expedite its review of comments and preparation of recommendations to the Commission, signaling the urgency of this proceeding.
- The freeze is adversely affecting auction bidders such as Radioactive and has the potential to devalue the amounts generated in broadcast auctions. Radioactive urges prompt Commission release of its Report and Order in MB Docket No. 05-210, or, in the interim, relief from the freeze for applicants for new FM broadcast facilities.
- Many of the auction allocations were proposed years before and/or by proponents who did not participate in the auctions. The original proponents often did not propose the community of license that would best advance the Commission’s mandate to make fair, efficient and equitable use of the spectrum.
- In deciding which auction allocations to bid on, Radioactive studied the areas to be served and often identified community of license changes that would better serve the Commission’s allocation priorities, as well as increase the value of the station. While recognizing the risks inherent in the process, based on established allocation principles, Radioactive was able to justify in certain instances higher bids at auction in light of the increased potential from community of license changes.
- Radioactive is prosecuting community of license change petitions at the Commission (it has two pending for which NPRMs have been issued). However, like other holders of three-year construction permits for new stations, Radioactive was not able to file all potential requests before the freeze was imposed. Thus, at this time, Radioactive and other auction permit holders cannot construct their new FM stations while they are waiting for the freeze to lift.

MB Docket No. 05-210

Presentation by Radioactive, LLC
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- Auction winners are particularly harmed by the freeze. They must hold off construction (and therefore initiation of service) if they plan a community of license change because (a) it is inefficiently and costly to construct a new station only to need to re-construct at the new community, and (b) if the permit is for the sole allotment to a community, service to that community cannot be initiated so as to not implicate the Allocations policy generally barring removal of a community's only established service. The uncertainty and delay caused by the freeze sends the unintentional message to past and future auction bidders that the Commission is uninterested in removing barriers to expeditious and maximized service, having a potential negative impact on auction revenues.
- If the freeze is not lifted, either across the board or specifically for new station permit holders, soon Radioactive and other auction winners will be faced with a Hobson's choice: (a) construct before the three-year construction period expires so as to not lose the auction investment but then lose the opportunity to relocate a sole service to a more deserving community or (b) continue to hold off construction and hope that the freeze ends, new streamlined processes are adopted, and the community of license change can be implemented in the time remaining on the permit (now less than two years). In the meantime, new radio service to the public is delayed.
- The Commission should take steps to expedite its adoption of a Report and Order in MB Docket No. 05-210 so that the freeze may be lifted as soon as possible. In light of pent-up demand, the freeze should be lifted first for holders of construction permits for new broadcast stations and/or the staff should be instructed to expedite processing of those requests first, so that new service may be initiated at the earliest possible date and before the impending construction deadlines.
- While Radioactive would prefer to file its change of community requests under a new, streamlined one-step application procedure, nevertheless, if the Report and Order in MB Docket No. 05-210 continues to be delayed, the Commission should lift the freeze on new petitions for rule makings for community of license changes for holders of FM permits for new stations, with directions to the staff to expedite processing, thereby promoting the initiation of new service.
- To the extent that the Commission adopts policy changes (such as those outlined in paragraph 28 of the NPRM, *e.g.*, limiting community of license changes to situations in which the new community has fewer transmission services than the current community), the Commission should maintain its established distinction between changes involving operating stations, and those involving unbuilt allocations, where the public has not come to rely on existing service.